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Supreme Court, U.S.
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FEB 7 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

HENRY ANDERSON, Appellant,

V.

OREGON STATE BAR, DONALD W. McEWEN,
JANICE M. STEWART, JOSEPH J. HANNA, jr.,
DEAN P. GISVOLD, ROBERT D. RANKIN,
PEGGY S. FORAKER, GENE C. ROSE,
ANTHONY YTURRI, CARL BURNHAM, jr.,
Appellees.

APPELLANT"S BRIEF OPPOSING
APPELLEES MOTION TO DISMISS OR AFFIRM

Henry Anderson
676 Covey Road
Valley Springs
Ca. 95252
Appellant
(no phone)

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANT HENRY ANDERSON'S BRIEF OPPOSING APPELLEES MOTION TO DISMISS OR AFFIRM

Appellant Henry Anderson pursuant to Rule 16.5, Rules of the Supreme Court of the United States, moves the Court for an Order dismissing Appellees motion to dismiss or affirm, on the grounds that the Rules 10, 11 and 12, of the Rules of the Supreme Court set forth the Jurisdiction of this Court in hearing Civil Appeals from the Federal Courts of Appeal.

U. S. Constitution Article VI, Section 2, states, This Constitution, and

> the Laws of the United States which shall be made in Pursuance thereof. . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, . . ."

When Congress passed Title 28, U.S.C. Section 636(c), that law became part of the Supreme Law of the Land, and all judges were bound to obey that law. The printed form supplied by the Oregon Court Clerk to appellant states in page 1, in the second paragraph thereof, quote, "You

> should be aware that your decision to consent or not to consent to the referral of your case to a United States magistrate "MUST BE ENTIRELY VOLUNTARY". Only if all the parties to the case consent to the reference to a magistrate will any judge or magistrate be informed of your decision."

Appellant, Anderson never requested or accepted the use of a magistrate.

> Alaniz V California Processors, Inc. (1982 CA9 Cal)690 F2d 717. Magistrate may exercise jurisdiction pursuant to 28 USCS Sec 636 (c)(1) only where he is specially designated to exercise such jurisdiction by district court or courts he served & where parties consent with out coercion by judge or magistrate to magistrate's authority to hear case & enter judgment.

Appendix A-1, a copy of the form sent by the Oregon District Court Clerk to the appellant ha: the title, "NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE AND APPEAL OPTION."

Appellant didnot consent to the use of a magistrate at any time.

> RIGHT-def. As a noun, and taken in an abstract sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals. As an adjective, the term "right" means just, morally correct, consonant with ethical principles or rules of positive law. It is the opposite of wrong, unjust, illegal.
>
> A power, privilege, or immunity guaranteed under a constitution , statutes.

Appendix A-2, a copy of the consent form sent by the District Court Clerk to appellant Anderson, which was never used.

Appendix A-3, copy of the CIVIL MINUTES, of the Oregon District Court. Note the deliberate misrepresentation of fact and law by the Calendar Management Committee.

U.S. Constitution Article III, Section 1. The judicial Power of the United States,

> shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.
>
> U.S. Constitution, Article I, Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

There is no question about the Power of Congress to make & pass laws & from Constitution Articles III & VI, those laws have to be obeyed by all the courts.

> In Lauf v E.G. Shinner & Co. 303 U.S. 323, 330 (1938) the Court ruled, "there can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States."

District courts have no authority to invalidate ACTS OF CONGRESS by custom, usage or subterfuge, or other devices.

Congress in that Appendix A-1 granted the rights of "FREEDOM OF CHOICE" to the people & the courts do not have authority to invalidate that PROCESS ordered by Congress.

This case has diversity of citizenship of the parties & Erie v Tompkins 304 U.S. 64 means Oregon State Constitution & laws apply in

this case. The State of Oregon doesnot use magistrates or recognize their use.

> Oregon Revised Statute 43.220 Impeachment of judicial record. Any judicial record may be impeached & the presumption arising therefrom overcome by evidence of a want of jurisdiction, collusion between the parties, or fraud in the party offering the record.

Congress in Appendix A-1, stated in order for the magistrate to have jurisdiction, the parties had freedom of choice to grant it.

The basic issues in this civil case are Civil Rights, DUE PROCESS OF LAW, Congress as the law making body established the process that was due in this case. Deprivation of DUE PROCESS OF LAW is one of the major civil rights issues presented to this Court. This Court has jurisdiction in those classes of cases.

> In Cohens V Virginia, 19 U.S. (6 Wheat) 264, 404 (1821) Chief Justice Marshall explained: It is most true, that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should . . ., We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.

The essential guarantee of the due process clause is that of fairness. The procedure must be fundamentally fair to the individual in the resolution of the factual and legal basis for court actions, which deprive him of life, liberty or property. FREEDOM OF CHOICE guaranteed appellant by Congress is part of that LIBERTY and that DUE PROCESS.

> In re Murchison, 349 U.S. 133,136 (1965) the Court held that "a fair trial in a fair tribunal is a basic requirement of due process."

It is a contradiction in terms to claim a fair tribunal for a court (Oregon Dist. Ct) which fails to obey the laws passed by Congress & deprives appellant of the EQUAL PROTECTION of those laws.

In this case it is the abuse of discretion by the judges of the Oregon Dist. Ct. that has invalidated by custom & usage & subterfuge the Act of Congress.

> In United States V Carolene Products Co. 304 U.S. 144 (1938) The Court said where the legislative judgment is drawn in question,(the inquiry) must be restricted to the issue whether any state of

> facts either known or which could reasonably be assumed, affords support for (the legislation).

Id. The Court has continued to emphasize that substantive due process analysis was available to protect an individual's civil rights.

The basic U.S. Constitutional fact of Equal Protection of the Laws, is the fact of fairness the Acts of Congress have tried to prove this. Then for the Oregon court to discriminate against appellant & deprive him of the protection of the laws passed by Congress is not fairness

> People V Jacobs, 27 Cal. App.3d 246. The Constitutional guarantee of "equal protection of the laws" means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness.

> Pinkerton V Farr, W.Va. 220 S.E.2d 682,687 "Aside from all else, "due process" means fundamental fairness."

> U.S. v Smith, D.C. Iowa, 249 F. Supp 515, 516. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought.

ARGUMENT OPPOSING MOTION TO DISMISS

Appendix A-1 is an exact copy of the legal rights created by Congress for all the people including appellant. Those rights include the liberty of "FREEDOM OF CHOICE" & that was entirely voluntary by the parties.

Appendix A-2, is an exact copy of the legal form showing the consent or choice made by the parties in the case. If the form is completed it was to be sent to,

Robert M. Christ, Clerk
United States District Court for
the District of Oregon
516 United States Courthouse
620 S.W. Main Street
Portland, Oregon 97205.

Appellant never accepted or filed that consent form or sent it to the Clerk.

Appendix A-3, is an exact copy of the CIVIL MINUTES of the Oregon Court which deliberately misrepresents fact & law & arbitrarily deprives appellant of his CIVIL RIGHTS. It inflicts a legal wrong on the appellant. It is intentional fraud.

> In Marbury v Madison, 5 U.S. (1 Cranch) 137 (1803) Chief Justice Marshall said, "the essence of civil liberty" required a legal remedy for a legal wrong. Since the government of the United States is one "of laws and not of men" it must grant a remedy for violation of vested legal rights."

The District Court arbitrarily in bad faith deprived appellant of the liberty of "FREEDOM OF CHOICE" ordered by Congress. The deprivation also deprived appellant of the "DUE PROCESS" ordered by Congress, and the deprivation also deprived appellant of "EQUAL PROTECTION OF THE LAWS".

With the basic deprivations & misrepresentations of fact & law by the judges it is an insult to the concept of fairness. There were no hearings, just arbitrary acts by incompetent persons in the Oregon court. A travesty on justice, it was not based on law, but the prejudice of the judges.

The Supreme Court in various rulings claims to protect the people from the illegal acts of the other branches of the government, BUT who is going to protect appellant from the arbitrary acts of the courts?

It is not fundamental fairness to allow Acts of Congress to be invalidated by custom & usage of the Oregon District Court. It is deliberate misrepresentation of fact and law and shows a bad faith intention.

This Supreme Court has jurisdiction to act in this Appeal & Order the court below to obey the laws and procedures ordered by Congress in Appendix A-1 and A-2.

ARGUMENT OPPOSING MOTION TO AFFIRM

1. Further Argument Is Required; the Court of Appeals' Decision Should Be Reversed.

Courts of Appeal are supposed to know & use the laws and the Acts passed by Congres.

This Appeal gives opportunity to demonstrate by action the prior Court rulings that the United States is a land governed by laws and not by men.

The Court of Appeals ruling is outright discrimination, it ignores the complete absence of any court hearings & deprivation of "DUE PROCESS OF LAW & EQUAL PROTECTION

OF THE LAWS" by the Oregon judges in the appellant's action in that court.

Nothing ir the Constitution or in the basic judicial iunction gives federal judges a claim to superiority in determining the reasableness of "Congressional Freedom of Choice" legislation.

The Supreme Court claims to be using a "strict scrutiny" standard for making an independent determination of the legality of laws which affect the "fundamental rights" of individuals under the Constitution.

BUT what kind of standards does the Court use when it is called upon to review the invalidation of Acts of Congress by judges acting through custom & usage and deceit?

Where does the victim go for protection and restoration of his Constitutional Rights?

In a nation founded upon written laws, the laws are there, why were they not used? "DISCRIMINATION", plain outright prejudice by the supposedly neutral, impartial courts.

CONCLUSION

Appellees' in their motion to dismiss or affirm, have stated in vague terms part of the conspiracy to deprive appellant of his U.S. Constitutional Rights, privileges and immunities. Appellant will tie in the various parts of the conspiracy citing various documents by title & if possible court docket number.

Appellant in filing his civil action in the district court, had the CONSTITUTIONAL Right, to have that case heard by an Article III federal judge.

Appellant was deprived of his RIGHTS by a conspiracy of court personnel & defendants to impose that incompetent magistrate on the appellant, contrary to law & misrepresenting him as a duly qualified judge.

The Court Clerk sent appellant a printed brochure, that contained the fraudulent promises made by the court, that appellant's FREEDOM OF CHOICE was entirely voluntary.

Appendix A-1 is a copy of those false promises made by the district court to the appellant. The key words being, "must be entirely voluntary".

Appendix A-2 is a copy of the consent page of that printed brochure of the court. Appellant never signed or accepted that consent form. The consent form is false,

Appendix A-3 is a copy of civil minutes, made by the anonymous calendar management committee, which is factually & legally misrepresentative & designed to mislead appellant. An outright, bad faith fraudulent document designed to deprive appellant of his U.S. Constitutional Rights,Privileges & Immunties. It was forced upon appellant. The word "judge" in it is totally false.

The person named juba, is an incompetent magistrate. Appellant sent a written objection CR 31, to having that incompetent man forced upon appellant. That action was illegal and the bogus judge had no jurisdiction

The Appeals Court joined the conspiracy of the district court & defendant's, when the Appeals Court contradicted the terms & provisions of Appendix A-1.

It is highly unusual for the reviewing court to ignore the Constitution on matters of public rights and public policy.

Appellees fail to cite any documents of the district court, that contain any notice or mention of time limitations for objections to be made by parties involved in the controversy.

Appellees fail to cite or take note that with the diversity of citizenship of the parties; many issues relating to Oregon Laws were ignored by the lower courts & a lack of jurisdiction is a relevant objection in this case. Appellant's Appeal should be granted and the case remanded for proper hearing according to the U.S. Constitution & Laws.

Respectfully submitted,

By: Henry Anderson

Henry Anderson
Appellant pro se.

NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE AND APPEAL OPTION

In accordance with the provisions of Title 28, U.S.C. Section 636(c), you are hereby notified that the United States Magistrates of this district court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent or not to consent to the referral of your case to a United States magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a magistrate will any judge or magistrate be informed of your decision.

An appeal from a judgment entered by a magistrate may be taken directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate may be taken directly to a district judge. Cases in which an appeal is taken to a district judge may be reviewed by the United States Court of Appeals for the Ninth Circuit only by way of petition for leave to appeal.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Plaintiff,	)	
	)	Civil No.
vs.	)	
	)	CONSENT TO PROCEED BEFORE A
	)	UNITED STATES MAGISTRATE
	)	
Defendant.	)	

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28 U.S.C. Section 636(c), _____ by counsel, consents to have a United States Magistrate conduct any and all further proceedings in this case, including trial, and order the entry of a final judgment.

DATED this _____ day of _____, 19____.

_____

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

Case No.: CIV. 85-1145-JU Date: Sept. 25, 1985
Title: Anderson v Oregon State Bar

DOCKET ENTRY

ORDER THAT THIS CASE IS REASSIGNED TO JUDGE GEORGE E. JUBA FOR TRIAL AND ALL FURTHER PROCEEDINGS. THIS ASSIGNMENT IS MADE BY THE CALENDAR MANAGEMENT COMMITTEE PURSUANT TO THE COURT'S ASSIGNMENT PLAN.

INSTRUCTIONS TO PARTIES:

This case has been assigned to JUDGE GEORGE E. JUBA for trial and